

FINRA (and selected SEC) regulatory matters at a glance – What compliance officers need to know

FINRA notices, rule filings and guidance and selected SEC materials for October 2020

By Glen Barrentine

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<u>Items of Note</u>	<u>FINRA Regulatory Notices</u>	<u>Other FINRA Notices</u>
<u>FINRA Rule Filings</u>	<u>SEC Rule Filings</u>	<u>FINRA Guidance</u>
<u>No Action Letters</u>	<u>Selected Enforcement and Litigation</u>	<u>Other matters of interest</u>

Chart color key	Action may be required (does not include continuing education items)	Administrative	Arbitration	Continuing education	No action needed
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Item	Subject matter	Heading	Relevant rule*	Comments	Relevant date	Impact on member
<u>This month's item(s) of note</u>						
Regulatory Notice 20-39	Fees Registration Renewals	Broker-Dealer, Investment Adviser Firm, Agent and Investment Adviser Representative, and Branch Renewals for 2021	Not Applicable	The Notice informs members that Preliminary Statements will be available in E-Bill as of November 16, 2020 and must be paid in full by December 14 th .	Payment Deadline for Preliminary Statements: December 14, 2020	Members should comply with the December 14, 2020 payment deadline for preliminary statements.

* Other rules may also apply

Item	Subject matter	Heading	Relevant rule*	Comments	Relevant date	Impact on member
Regulatory Notice 20-38	Sales Practice Registered Representatives Customer Beneficiary Position of Trust for a Customer	FINRA Adopts Rule to Limit a Registered Person From Being Named a Customer's Beneficiary or Holding a Position of Trust for or on Behalf of a Customer	FINRA Rule 3241 (Registered Person Being Named a Customer's Beneficiary or Holding a Position of Trust for a Customer)	The Notice informs members of the adoption and effective date of new FINRA Rule 3241, which, subject to certain exceptions, prohibits a registered representative from being named a customer's beneficiary or holding a position of trust for a customer.	Effective Date: February 15, 2021.	Members should consider implementing policies and procedures and training relevant to the newly approved rule.

FINRA Regulatory Notices

Regulatory Notice 20-39	Fees Registration Renewals	Broker-Dealer, Investment Adviser Firm, Agent and Investment Adviser Representative, and Branch Renewals for 2021	Not Applicable	The Notice informs members that Preliminary Statements will be available in E-Bill as of November 16, 2020 and must be paid in full by December 14 th .	Payment Deadline for Preliminary Statements: December 14, 2020	Members should comply with the December 14, 2020 payment deadline for preliminary statements.
Regulatory Notice 20-38	Sales Practice Registered Representatives Customer Beneficiary Position of Trust for a Customer	FINRA Adopts Rule to Limit a Registered Person From Being Named a Customer's Beneficiary or Holding a Position of Trust for or on Behalf of a Customer	FINRA Rule 3241 (Registered Person Being Named a Customer's Beneficiary or Holding a Position of Trust for a Customer)	The Notice informs members of the adoption and effective date of new FINRA Rule 3241, which, subject to certain exceptions, prohibits a registered representative from being named a	Effective Date: February 15, 2021.	Members should consider implementing policies and procedures and training relevant to the newly approved rule.

* Other rules may also apply

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				customer's beneficiary or holding a position of trust for a customer.		
Regulatory Notice 20-37	Enforcement Sanction Guidelines	The National Adjudicatory Council (NAC) Revises the Sanction Guidelines	FINRA Rule 2165 (Financial Exploitation of Specified Adults)	The Notice informs members that the NAC has revised the Sanction Guidelines to expressly consider a customer's age or physical or mental impairment.	Immediately	None.
Regulatory Notice 20-36	Security-Based Swaps	FINRA Requests Comment on a Concept Proposal Regarding the Application of FINRA Rules to Security-Based Swaps	FINRA Rule 0180 (Application of Rules to Security-Based Swaps)	Currently, FINRA Rule 0180 provides a temporary exception from the application of FINRA rules to security-based swaps. This exception is scheduled to expire in September of next year. The Notice requests comment on a concept proposal that would replace this general exception with limited, targeted exceptions.	Comment Period Expires: November 16, 2020	None. The Notice is for the purpose of soliciting comments on a concept proposal.
Regulatory Notice 20-35	Cyber Security Phishing Fake FINRA Domain Name	FINRA Alerts Firms to Phishing Emails Requesting Them to Respond to Fraudulent FINRA Survey	Not Applicable	In what is becoming a frequent occurrence, FINRA once again alerts its	Immediately	In light of this and earlier phishing-related notices, members may want to revisit

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				members of fraudulent emails purporting to be from FINRA and using the domain “@regulation-finra.org.”		their policies around authorization to respond to emails from FINRA. If they have not already done so, firms may want to take steps to limit who is so authorized and provide training to non-authorized employees as to what they should do if they receive an email that purports to be from FINRA as well as the significant phishing-related risks accompanying such emails.
Regulatory Notice 20-34	Sales Practices Financial Exploitation Senior Investors	Proposed Amendments to FINRA Rule 2165 and Retrospective Rule Review Report	FINRA Rule 2165 (Financial Exploitation of Specified Adults)	The Notice requests comment on proposed amendments to FINRA Rule 2165 (Financial Exploitation of Specified Adults), which were suggested by FINRA’s earlier retrospective review. These changes would extend the hold period and allow temporary holds on	Comment Period Expires: December 4, 2020	None. The Notice is for the purpose of soliciting comments on the proposal.

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				securities transactions to further address suspected financial exploitation of senior investors.		
<u>Other FINRA Notices</u>						
Information Notice 10-15-20	Cyber Security Authentication Access Control	Cybersecurity Background: Authentication Methods	Not Applicable	The Notice provides non-exhaustive background information and resources on authentication techniques that firms may want to consider.	Immediately	None.
<u>FINRA Rule Filings</u>						
SR-FINRA-2020-034 34-90264	Trade Reporting and Compliance Engine (TRACE) Agency Pass-through MBS or SBA-Backed ABS Traded in Specified Pools (the "Covered Securities")	Notice of Filing of a Proposed Rule Change to Modify TRACE Dissemination Protocols Regarding Agency Pass-Through MBS or SBA-Backed ABS Traded in Specified Pool Transactions	Not Applicable	The Notice would modify dissemination protocols regarding the Covered Securities.	Comment Due Date: November 19, 2020	None. The Notice is for the purpose of soliciting comments on the proposed rule.
SR-FINRA-2020-035 34-90227	Fees Arbitration	Notice of Filing of a Proposed Rule Change to Amend the FINRA Codes of Arbitration Procedure to Increase Arbitrator Chairperson Honoraria and Certain Arbitration Fees	FINRA 12000 Series Rules – Code of Arbitration Procedure for Customer Disputes FINRA 13000 Series Rules – Code of Arbitration Procedure for Industry Disputes	The Notice proposes rule changes to increase arbitrator chairperson honoraria and certain arbitration fees.	Comment Due Date: November 16, 2020	None. The Notice is for the purpose of soliciting comments on the proposed rule.

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SR-FINRA-2020-036 34-90219	Trading Exchange-Listed Securities Clearly Erroneous Transactions	Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Pilot Program Related to FINRA Rule 11892 (Clearly Erroneous Transactions in Exchange-Listed Securities)	FINRA Rule 11892 (Clearly Erroneous Transactions in Exchange-Listed Securities)	The Notice extends the pilot period related to FINRA Rule 11892 (Clearly Erroneous Transactions in Exchange-Listed Securities) to April 20, 2021.	Pilot Extension Date: April 20, 2021.	None. The Notice merely extends an existing pilot period for an additional six months.
SR-FINRA-2020-032 34-90176	Fees	Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Adjust FINRA Fees to Provide Sustainable Funding for FINRA's Regulatory Mission	Not Relevant	The Filing provides notice of FINRA's implementation of a fee increase that, once fully implemented in 2024 will increase FINRA's overall fees by approximately \$225 million.	Effective Date: The increased fees will be phased in over the period 2022 to 2024.	Members will face increased FINRA fees beginning in 2022.
SR-FINRA-2020-033 34-90160	Trading NMS Circuit Breakers	Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Pilot Period Related to FINRA Rule 6121.02 (Market-wide Circuit Breakers in NMS Stocks)	FINRA Rule 6121.02 (Market-wide Circuit Breakers in NMS Stocks)	The Notice extends the pilot period related to FINRA Rule 6121.02 (Market-Wide Circuit Breakers in NMS Stocks) to October 18, 2021.	Pilot Extension Date: October 18, 2021.	None. The Notice merely extends an existing pilot period for an additional year.
SR-FINRA-2020-024 34-90129	Securities Reporting Order Audit Trail System (OATS)	Notice of Designation of Longer Period for Commission Action on a Proposed Rule Change to Delete the FINRA Order Audit Trail System (OATS) Rules	FINRA Rule 4554 (Alternative Trading Systems — Recording and Reporting Requirements of Order and Execution Information for NMS Stocks)	The underlying Notice proposes to delete OATS reporting once member firms have transitioned to reporting pursuant to the	The Notice extends the time for SEC action on the underlying rule proposal until November 30, 2020.	None. The Notice is for the purpose of extending the time period available to the SEC to approve, disapprove or institute

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			FINRA Rule 7400 (Order Audit Trail System)	Consolidated Audit Trail.		proceedings to determine whether to disapprove the proposed rule change.
SR-FINRA-2020-020 34-90116	Sales Practice Registered Representatives Customer Beneficiary Position of Trust for a Customer	Order Approving a Proposed Rule Change To Adopt FINRA Rule 3241 (Registered Person Being Named a Customer's Beneficiary or Holding a Position of Trust for a Customer)	FINRA Rule 3241 (Registered Person Being Named a Customer's Beneficiary or Holding a Position of Trust for a Customer)	The Order approves previously proposed FINRA Rule 3241, which, subject to certain exceptions, would prohibit a registered representative from being named a customer's beneficiary or holding a position of trust for a customer.	Effective Date: February 15, 2021.	Members should consider implementing policies and procedures and training relevant to the newly approved rule.
SR-FINRA-2020-031 34-90067	Trading Inter-dealer Quotation System OTC Equity Securities Quotations	Notice of Filing of a Proposed Rule Change to Adopt FINRA Rule 6439 (Requirements for Member Inter-Dealer Quotation Systems) and Delete the Rules Related to the OTC Bulletin Board Service	Proposed Rule 6439 (Requirement for Member Inter-Dealer Quotation Systems)	The proposed rule would delete the rules related to the OTC Bulletin Board Service and terminate its operations while also enhancing the regulation of quotations in OTC Equity Securities by adopting new requirements for member inter-dealer quotation systems.	Comment Due Date: October 28, 2020	None. The rule filing is for the purpose of soliciting comments on the proposed rule.

SEC Rule Filings

* Other rules may also apply

Item	Subject matter	Heading	Relevant rule*	Comments	Relevant date	Impact on member
Securities Exchange Act Release 34-90244 October 22, 2020	Margin Security Futures	Customer Margin Rules Relating to Securities Futures	Customer Margin Requirements for Securities Futures (17 C.F.R. §242.400 <i>et seq.</i>)	The Order lowers the initial and maintenance margin requirements for an unhedged security future position from 20% to 15%.	Effective Date: 30 days after publication in the Federal Register.	None. Firms that provide margin on securities futures may want to consider whether to lower the rate they charge to customers.

FINRA Guidance

[COVID-19 Guidance and Relief](#) Firms are urged to monitor updates to the guidance and relief set forth on FINRA's [COVID-19 Page](#).

SEC Guidance

[COVID-19 Guidance and Relief](#) Firms are urged to monitor updates to the guidance and relief set forth on the [SEC's COVID-19 page](#).

No Action Letters of particular relevance to Broker-Dealers

[Financial Industry Regulatory Authority \(Broker-Dealer Borrowing Fully Paid and Excess Margin Securities from Customers\)](#) October 22, 2020. The no-action letter informs brokerage firms that borrow customer fully paid and excess margin securities, that the customer protection rule (17 CFR 240.15c3-3) requires that the broker provide the customer with collateral securing such loan and, further, that such collateral must be “turn[ed] over physically to the [customer].” More significantly, the letter also seems to say that any arrangement that leaves the broker with control over the collateral, that is, the “operational ability to transfer or liquidate the collateral” is inconsistent with the requirement that the collateral be turned over physically to the customer. For example, depositing the collateral in the customer’s brokerage account at the borrowing broker-dealer or in an omnibus account at a bank in the name of the borrowing broker-dealer would be inconsistent with the physical delivery requirement. The letter also provides non-complying brokerage firms that were operating a program relating to the borrowing of customer fully paid and excess margin securities prior to October 22nd, with a six month grace period to bring such programs into compliance with the customer protection rule.

Selected Enforcement and Litigation Actions

None

Other matters of interest including OCIE materials and other SEC press releases, SEC public statements, and FINRA press releases

None

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Information about this chart

The information set forth herein is for general informational purposes only and is not meant as a full analysis of any particular matter and should not be relied upon as legal advice regarding any factual situation.



About Glen Barrentine

Glen Barrentine has extensive experience involving regulatory, compliance and enforcement issues affecting financial service companies, particularly broker-dealers, investment advisers, municipal advisors, and securities exchanges.

Glen frequently represents and advises clients in connection with SEC and FINRA enforcement proceedings and other regulatory inquiries, such as inspections and examinations, as well as on transactions involving the purchase, sale or restructuring of financial service companies. Glen also provides clients with counseling and advice across the full range

of regulatory and compliance issues arising under the rule sets issued by the SEC, FinCEN, FINRA and the various securities exchanges, e.g., the NYSE.

Particular areas of focus include insider trading, registration and membership, anti-money laundering, broker-dealer net capital requirements, sales practices, research, trading and trade reporting, Rule 15a-6 and cross border activities by foreign broker-dealers, pay to play restrictions, supervision, and soft dollars. Other areas of focus include the preparation of supervisory and compliance procedures and drafting and negotiating clearing, account, prime brokerage, and other industry agreements.

Glen was previously a member of the Board of Directors of the National Society of Compliance Professionals (NSCP), the largest organization in the US devoted exclusively to compliance in the financial services industries. He currently hosts NSCP's monthly Broker-Dealer Forum and previously chaired the NSCP's Governance Committee and Investment Advisers Forum.

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